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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Lawyers' Rights Watch Canada, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Shrinking Space for Dissent in Canada

I. Recommendations

Lawyers Rights Watch Canada calls on the Human Rights Council to promote and protect the rule of law and fundamental rights and freedoms in Canada by monitoring and recommending:

1. An immediate cessation of the surveillance of human rights defenders, Indigenous groups, and environmental organizations in Canada.
2. An immediate end to discriminatory inquiries and audits by the Canada Revenue Agency of Canadian charitable organizations.
3. The creation of an enabling environment for civil society organizations (CSOs) and human rights defenders, including:
    a. An immediate cessation of public rhetoric by the Government of Canada calling environmental protection and other groups "radicalized" and suggesting that their receipt of international funding makes them foreign agents working against Canadian interests.
    b. Amendments to the *Income Tax Act*[1] and/or the regulatory and policy framework, which unduly limit charitable activities by restricting policy and advocacy work.

II. Background

The capacity of CSOs to engage in advocacy and dissent depends on a complex interplay between regulatory, political and social factors. The concept of an "enabling environment" has emerged to define the scope of these factors and goes beyond identifying the restrictions that prevent groups from existing, functioning and growing and extends to include conditions that actively help civil society to function and thrive. Not only has the present federal government not created an enabling environment, but its policies and practices have created a harsh and punitive environment for dissent and dissenters.

LRWC notes with growing concern the constricting space for dissent in Canada for CSOs and human rights defenders. Several sources have undertaken research and documentation of this trend, including Amnesty International, the British Columbia Civil Liberties Association (BCCLA), CIVICUS, Human Rights Watch and Voices-Voix, a Canadian coalition of more than 200 CSOs.[2]

In October 2013, Mr. Maina Kiai, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, expressed concern about reports from CSOs in Canada regarding increasing legal, political, economic and regulatory restrictions.[3] Particularly since 2010, Canada has deployed an unprecedented range of restrictive measures to reduce the legal, financial and political space available to CSOs and human rights defenders.[4] Areas targeted and social programs dismantled include international development, women's equality, and immigrant and refugee support

[1] RSC, 1985, c. 1 (5th Supp.).

[2] *Time for Consistent Action - Amnesty International's Human Rights Agenda for Canada* (December 2013). Online Amnesty: < http://www.amnesty.ca/news/news-releases/time-for-consistent-action-amnesty-international%E2%80%99s-human-rights-agenda-for-canada> at 11-12; CIVICUS. *State of Civil Society 2013: Creating an Enabling Environment*. Online CIVICUS: < http://socs.civicus.org/> at 127 ff; Human Rights Watch, *World Report 2014* Canada. Online HRW: < http://www.hrw.org/world-report/2014/country-chapters/canada?page=1>; Voices-Voix Documentation Project, online: <http://www.voices-voix.ca>. See also Pearl Eliadis, *Speaking Out on Human Rights: Debating Canada's Human Rights System* (McGill-Queen's University Press, 2014) at 8, 196. For an overview of attacks on labour rights and unions in Canada, see Matthew Behrens and The Canadian Foundation for Labour Rights (eds) *Unions Matter: Advancing Democracy, Economic Equality, and Social Justice* (Toronto: BTL Books, 2014).

[3] Interview with Maina Kiai, Special Rapporteur on freedom of peaceful assembly and of association (McGill University, October 23, 2013), Online: YouTube: <http://www.youtube.com/watch?v=FpoaQI5U9Gs>

[4] *Supra*, note 3. See also *Voices-Voix Submission to 16th session of the Universal Periodic Review Working Group of the Human Rights Council* (22 April - 3 May 2013). Online: <http://voices-voix.ca/en/document/voices-voix-submission-un-universal-periodic-review>.

organizations. Also targeted are academics, Indigenous individuals, organizations and communities who exercise their right to dissent and who seek to protect and promote human rights.[5]

The documented tactics and measures used by the federal Government of Canada include:

- The monitoring and surveillance of Indigenous organizations, environmental groups and human rights defenders engaged in lawful activities.[6] As well, there is evidence that Canadian security authorities have shared sensitive investigative information with private sector interests and with other government agencies.[7]
- The targeted defunding of leading international development organizations,[8] Indigenous groups,[9] women's equality and pay equity groups,[10] and social justice groups.[11]

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[5] Les Whittington, "Conservatives dismantling social programs built over generations," *Toronto Star* (December 9 2013). Online: http://www.thestar.com/news/canada/2013/12/09/conservatives_dismantling_social_programs_built_over_generations.html

[6] See notes 3 and 6, and accompanying text. The alleged surveillance of human rights defender Cindy Blackstock, see the findings of the Office of the Privacy Commissioner of Canada, *Aboriginal Affairs and Northern Development Canada wrongly collects information from First Nations activist's personal Facebook page* Findings Under the Privacy Act (2012—2013): Online: <http://www.priv.gc.ca/cf-dc/pa/2012-13/pa_201213_01_e.asp>. For a judicial analysis of allegations of reprisal and surveillance of Dr. Blackstock and the First Naions Child and Family Caring Society for their work advocating for Indigenous children on reserves in Canada, see *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada*, (2012) CHRT 2 24. With respect to reports and formal complaints about national security surveillance and related activities directed against environmental advocacy groups, Canadian media reported in 2013 on internal documents from the Royal Canadian Mounted Police (RCMP) referring to "a growing radicalized environmentalist faction within Canadian society that is opposed to Canada's energy sector policies" (Jim Bronskill, "RCMP Concerned About 'Radicalized Environmentalist' Groups Such As Greenpeace: Report," *The Canadian Press*, July 29, 2012.). Subsequent media reports have suggested that protests and opposition relating to the petroleum industry are regarded as threats to national security by the RCMP and other government agencies (Stephen Leahy, "Canada's environmental activists seen as 'threat to national security'," *The Guardian*, February 14, 2013). The media have also reported that the RCMP shared information with an independent regulatory agency, the National Energy Board, about "radicalised environmentalist" groups seeking to participate in the Board's hearings regarding the Northern Gateway Project. These groups include Canada's leading advocacy and environmental organizations (Leadnow, ForestEthics Advocacy, the Council of Canadians, the Dogwood Initiative, EcoSociety, and the Sierra Club of British Columbia). Canada's surveillance of these organizations, which oppose pipeline activities in northern Canada, is now the subject of formal complaints by the BCCLA, which are the source of the references in this note. Online: <http://bccla.org/2014/03/complaint-against-rcmp-and-csis-spying-moves-to-the-next-level/ >.

[7] See *Complaint re Surveillance of Canadian Citizens and Information Sharing with the National Energy Board to the Commission for Public Complaints against the RCMP* (filed by the BCCLA, February 6, 2014); *Complaint re Surveillance of Canadian Citizens and Information Sharing*
with the National Energy Board (filed by the BCCLA, February 6, 2014). Both are available online: BCCLA <http://bccla.org/dont-spy-on-me/>.

[8] Pearl Eliadis, Nikki Skuce, and Fraser Reilly, "Silencing Voices and Dissent in Canada," *State of Civil Society Report* (CIVICUS, 2013). Online CIVICUS: http://socs.civicus.org/?p=3825.

[9] Documents obtained from Canadian authorities indicate that since 2006 Canada's federal government has closely monitored indigenous communities across Canada that engage in direct action for protection of their territories, including the Tobique First Nation, Tsartlip First Nation, Algonquins of Barriere Lake, Teztan Biny (Fish Lake) First Nation, Six Nations, Grassy Narrows, Stz'uminous First Nation, the Likhts'amsiyu Clan of the Wet'suwet'en First Nation, Gitxaala First Nation, Wagmatcook First Nation, Innu of Labrador, Pikangikum First Nation. See Russell Diabo and Shiri Pasternak, "First Nations under Surveillance: Harper Government Prepares for First Nations "Unrest." Media Co-op (June 7, 2011), <http://www.mediacoop.ca/story/first-nations-under-surveillance/7434>; Martin Lukacs and Tim Groves, "RCMP spied on B.C. natives protesting pipeline plan, documents show" *Toronto Star* (May 9, 2012). See also the BCCLA complaints, see note 8, above.

[10] See e.g. the documentation provided in case studies developed by the Voices-Voix coalition on defunding of multiple women's groups by Status of Women Canada, <http://voices-voix.ca/en/facts/profile/status-women-canada > and Health Canada, <http://voices-voix.ca/en/facts/profile/reseau-quebecois-daction-pour-la-sante-des-femmes >. See in particular: defunding of: National Network on Environments and Women's Health, <http://voices-voix.ca/en/facts/profile/national-network-environments-and-womens-health >; New Brunswick Coalition for Pay Equity, <http://voices-voix.ca/en/facts/profile/new-brunswick-coalition-pay-equity >; Réseau québecois d'action pour la santé des femmes, < http://voices-voix.ca/en/facts/profile/reseau-quebecois-daction-

- Public vilification and smear campaigns against environmental groups and human rights defenders,[12] as well as the orchestration of such campaigns with groups having close ties to government.[13]
- Increasingly restrictive interpretations of tax law by federal revenue authorities to strip established environmental and human rights organizations of their charitable status or to impose significant regulatory burdens, thereby limiting their effective operation and capacity to raise funds.[14]
- Reprisals against government whistleblowers, including a government lawyer who has challenged the federal Government's failure to advise Parliament of new legislation that is likely to violate the Canadian Charter of Rights and Freedoms (which implements many of Canada's international human rights obligations) and well as international human rights law itself.[15]

Every elected government has the right to pursue its policies and agenda: LRWC submits, however, that attacks go further and inhibit legitimate work of CSOs and human rights defenders.

III. International Standards

Monitoring, surveillance, and information sharing with other government agencies and with private sector interests create a chilling effect for groups and individuals who wish to participate peacefully in public processes. Such activities also interfere with privacy. The rights to privacy, freedom of expression, opinion, association, and peaceful assembly are protected by the *International Covenant on Civil and Political Rights*, notably Articles 17, 18, 19, 21, and 22.

In May 2012, Mr. Maina Kiai outlined best practices for the rights to freedom of peaceful assembly and of association, including for CSOs.[16] Mr. Kiai noted that the "right to freedom of association obliges States to take positive measures to establish and maintain an enabling environment," including the obligation to ensure that organizations can operate freely, without fear of smear campaigns. He further noted that associations pursuing objectives and employing means in accordance with international human rights law should benefit from international legal protection, stating: "Associations should enjoy, inter alia, the rights to express opinion, disseminate information, engage with the public

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pour-la-sante-des-femmes >; Sisters in Spirit, < http://voices-voix.ca/en/facts/profile/sisters-spirit >; South Asian Women's Centre, <http://voices-voix.ca/en/facts/profile/south-asian-womens-centre >; the Women's Legal Education and Action Fund (LEAF), <http://voices-voix.ca/en/facts/profile/womens-legal-education-and-action-fund-leaf >; and the Feminist Alliance for International Action (FAFIA), <http://fafia-afai.org/ > to name a few.

[11] See e.g., documentation provided in Voices-Voix case studies on funding cuts to the Canadian HIV/AIDS Legal Network, <http://voices-voix.ca/en/facts/profile/canadian-hivaids-legal-network>; Canada without Poverty, <http://voices-voix.ca/en/facts/profile/canada-without-poverty >, the Centre for Equality Rights in Accommodation, <http://voices-voix.ca/en/facts/profile/centre-equality-rights-accommodation> and Court Challenges Program, <http://voices-voix.ca/en/facts/profile/court-challenges-program >.

[12] In some cases, rhetorical vilification has carried implicit or even explicit overtones of criminalization and subversive activity. The Hon. Joe Oliver, Minister of Natural Resources in 2012 accused environmental and "other" groups of being "radical" and pursuing a "radical ideological agenda." Open Letter, Government of Canada: Online: http://www.nrcan.gc.ca/media-room/news-release/2012/1/1909. The public vilification of such groups has targeted such well-established and respected CSOs as Environmental Defence, Tides Canada, the David Suzuki Foundation and the Sierra Club Canada Foundation. Kristin Courtney, "Canadian resource firms step up legal fight against green groups" (Thomas Reuters Foundation, 22 January 2013).

[13] See "Aboriginal communities and environmental groups," Voices-Voix Documentation Project. Online: <http://voices-voix.ca/en/facts/profile/aboriginal-communities-and-environmental-groups> See also Note 13 above.

[14] Targeted organizations include: Canadian Mennonite magazine, <http://www.canadianmennonite.org/articles/canadian-mennonite-warned-political-activities >; Physicians for Global Survival, <http://voices-voix.ca/en/facts/profile/physicians-global-survival>; Sierra Club Canada Foundation, supra note 13; Tides Canada, supra note 13.

[15] See e.g. the case of Edgar Schmidt, currently before the Federal Court of Canada. See the compendium of court proceedings at http://charterdefence.ca/court-proceedings.html. For a case summary, see Canadian Journalists for Free Expression, <http://www.cjfe.org/resources/features/update-canadian-whistleblower-edgar-schmidt> .

[16] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, online: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.27_En.pdf.PDF.

and advocate before Governments and international bodies for human rights." Finally, he underscored that the ability of associations to access funding and resources is integral and vital to freedom of association.[17]

IV. Conclusion

The ability to participate freely and meaningfully in debates on key public policy and political questions engages Canada's international human rights obligations such as obligations to ensure freedoms of opinion, expression, peaceful assembly, and association. It further engages with the growing emphasis on the processes and mechanisms that facilitate and enable the exercise of these rights and freedoms, including an enabling environment, the duty to negotiate, to consult, to accommodate, and to participate in democratic governance.[18]

Some mechanisms that foster the role of civil society to participate in policy debates are the availability of spaces for inclusive dialogue with governments, the meaningful opportunity to influence policy agendas, a legal and policy framework that facilitates collective organizing, and the ability to fundraise. While Canada is to be applauded for recent efforts in 2014 to respond to these criticisms and develop a framework for an enabling environment, the reality on the ground for CSOs and human rights defenders remains troubling.

Restrictive and punitive tactics deployed by the federal government of Canada have reduced the operating and fundraising capacity of human rights defenders and CSOs that oppose government policies. One particularly troubling trend is the selective targeting of organizations by Canadian revenue authorities to strip certain organizations of their charitable status. Another is the public vilification of those with whom the government disagrees, leading the public to believe that CSOs and human rights defenders engaged in lawful activities are dangers to the State to be surveilled and spied upon with impunity.

VII. UN Human Rights Council Mandate

The United Nations Human Rights Council is mandated to promote and protect human rights by, *inter alia*, preventing violations, removing obstacles to enforcement, engaging states in dialogue, and making recommendations for the protection of human rights.[19] The Council should affirm the illegality of monitoring and surveillance activities directed against the peaceful and lawful activities of CSOs and human rights defenders that promote environmental protection, Indigenous Peoples' rights and fundamental rights and freedoms. The Council should encourage Canada to undertake practical measures to reinstate an enabling environment for CSOs and human rights defenders in Canada, including the cessation of surveillance and intimidation of peaceful CSOs and human rights defenders, and the development of more modern tax framework for charitable activities that allows CSOs and individuals to participate freely in democratic governance.

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[17] Ibid.

[18] See e.g. Colleen Sheppard, "Inclusion, Voice and Process-based Constitutionalism" (2013) 50:3 Osgoode Hall LJ 547.

[19] General Assembly Res. A/RES/48/141 20 Dec. 1993, articles 3 (a), (f), (g), and General Assembly Res.A/RES/60/251, 3 Apr. 2006, art. 5(i).